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VICTOR GUERRERO

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VICTOR GUERRERO,)	Case No.: C13-5671-WHA
Plaintiff)	
f and Petitioner,)	SECOND AMENDED COMPLAINT
)	FOR EMPLOYMENT
v.)	DISCRIMINATION; PETITION FOR
)	WRITS OF MANDATE
CALIFORNIA DEPARTMENT OF)	
CORRECTIONS AND REHABILITATION;)	
STATE PERSONNEL BOARD; and, in their)	[JURY TRIAL DEMANDED]
official capacities, JEFFREY BEARD,)	
Secretary of the California Department of)	
Corrections and Rehabilitation; SUZANNE)	
AMBROSE, Executive Officer of State)	
Personnel Board; K. CARROLL, Lieutenant;)	
D. SHARP, Sergeant; BARBARA)	
LEASHORE, Hearing Officer; C. HESTER,)	
Lieutenant; V. MAYOL, Lieutenant; S. COX,)	
Lieutenant; V. MYERS, Sergeant; JOHN (OR)	
JANE) DOES 1-100, all whose true names are)	
unknown,)	
Defendants)	
and Respondents.)	

NATURE OF THIS ACTION

1. This is an action for relief from employment discrimination in violation of Title VII

**SECOND AMENDED COMPLAINT FOR EMPLOYMENT DISCRIMINATION;
PETITION FOR WRITS OF MANDATE**

1 of the Civil Rights Act of 1964, *as amended*, the Fourteenth Amendment to the United States
 2 Constitution as secured by 42 U.S.C. § 1983, the California Fair Employment and Housing Act
 3 (“FEHA”), California Government Code § 11135, and California Constitution Art. 1, § 7.

4 2. This is also a petition for relief from an administrative action pursuant to §§ 1094.5
 5 and 1085 of the California Civil Code of Procedure.

6 3. Plaintiff and Petitioner VICTOR GUERRERO alleges that the decision of
 7 Defendants and Respondents CALIFORNIA DEPARTMENT OF CORRECTIONS AND
 8 REHABILITATION (“CDCR”), STATE PERSONNEL BOARD (“SPB”), and in their official
 9 capacities only: JEFFREY BEARD, Secretary of the California Department of Corrections and
 10 Rehabilitation; SUZANNE AMBROSE, Executive Officer of State Personnel Board; K.
 11 CARROLL, Lieutenant; D. SHARP, Sergeant; BARBARA LEASHORE, Hearing Officer; C.
 12 HESTER, Lieutenant; V. MAYOL, Lieutenant; S. COX, Lieutenant; V. MYERS, Sergeant; and
 13 JOHN (or JANE) DOES 1-100, all of whose true names are unknown (collectively,
 14 “Defendants”) to disqualify GUERRERO from eligibility for a Correctional Officer position
 15 unlawfully discriminated against him on the basis of his national origin and ancestry, and that
 16 Defendants’ policies, practices, and decisions have a disparate impact upon particular national
 17 origin minorities, such as Latino/a applicants for the position of Correctional Officer.

18 4. Plaintiff GUERRERO further alleges that Defendants’ disqualification of his
 19 application for a Correctional Officer position was unlawful in that it violated Title VII, the
 20 FEHA, Cal. Gov. Code § 11135, and his rights under the United States and California
 21 Constitutions, and additionally because, as applied, the regulation, 2 Cal. Code of Reg. § 172
 22 (also referred to herein as “State Personnel Board Rule 172” or “SPB Rule 172”), under which
 23 he was disqualified represents an unlawful expansion of its enabling statute.

24 5. Plaintiff GUERRERO seeks injunctive and declaratory relief, compensatory
 25 damages and his reasonable attorneys’ fees and costs as remedies for Defendants’ violations of
 26 his rights.

27 //

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JURISDICTION AND VENUE

6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337. This action is authorized and instituted pursuant to Section 706(f)(3) of Title VII of the Civil Rights Act of 1964, *as amended* (“Title VII”), 42 U.S.C. § 2000e-5(f)(3); and Section 1979 of the Revised Statutes of the United States, *as amended* (Section 1983), 42 U.S.C. § 1983.

7. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy under Article III of the United States Constitution. Plaintiff’s state law claims share all common operative facts with his federal law claims, and the parties are identical. Resolving Plaintiff’s federal and state claims in a single action serves the interests of judicial economy, convenience, consistency, and fairness to the parties.

8. But for the Defendants’ employment practices alleged to be unlawful, Plaintiff would have been eligible for employment in California correctional facilities within this judicial district. Venue is therefore proper.

INTRADISTRICT ASSIGNMENT

9. This action is appropriate for assignment to the San Francisco Division of this Court, as the unlawful practices alleged were and are now preventing Plaintiff from obtaining employment with Defendants as a Correctional Officer in Marin County, which is situated within the San Francisco Division.

PARTIES

10. Plaintiff and Petitioner GUERRERO is a citizen of the United States and a resident of Stockton, California. Plaintiff GUERRERO is of Latino national origin. He is studying for an associate’s degree in Criminal Justice and Correctional Science at San Joaquin Delta College. He received a Certificate of Correctional Science in December 2013, and expects to graduate with a double Associate Degree in Applied Science (AAS) in Criminal Justice Systems: Law Enforcement and Correctional Science in the spring of 2014.

11. Defendant and Respondent CDCR is an employer within the meaning of Title VII

1 and the FEHA.

2 12. Defendant and Respondent SPB is an employer and a third-party interferer within the
3 meaning of Title VII and the FEHA. Alternatively, SPB is an agent of CDCR and/or engaged in
4 an integrated enterprise with CDCR.

5 13. CDCR is a state entity existing under a charter granted by the Legislature of the
6 State of California and adopted pursuant to the Constitution and laws of the State of California.
7 CDCR operates at least one correctional facility in Marin County.

8 14. SPB was established under the California Constitution and is responsible for
9 overseeing the merit-based, job-related recruitment and selection process for the hiring of
10 California state employees. SPB audits departments for merit system compliance and is
11 empowered to hear appeals from disqualification of candidates for employment in the
12 Correctional Officer position.

13 15. Defendant and Respondent SUZANNE AMBROSE is, and was at all relevant times,
14 the Executive Officer of SPB.

15 16. Defendant and Respondent JEFFREY BEARD is, and was at all relevant times, the
16 Secretary of the CDCR.

17 17. Defendant and Respondent K. CARROLL is, and was at all relevant times, a
18 Lieutenant at the CDCR and is, and was at all relevant times, involved in conducting CDCR
19 background investigations.

20 18. Defendant and Respondent D. SHARP is, and was at all relevant times, a Sergeant at
21 the CDCR and is, and was at all relevant times, involved in conducting CDCR background
22 investigations.

23 19. Defendant and Respondent BARBARA LEASHORE is, and was at all relevant times,
24 a Hearing Officer at the SPB and reviews and reviewed appeals regarding the state civil service
25 system.

26 20. Defendant and Respondent C. HESTER is, and was at all relevant times, a Lieutenant
27 at the CDCR and is, and was at all relevant times, involved in conducting CDCR background

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investigations.

21. Defendant and Respondent V. MAYOL is/was at all relevant times a Lieutenant at the CDCR and is, and was at all relevant times, involved in conducting CDCR background investigations.

22. Defendant and Respondent S. COX is/was at all relevant times a Lieutenant at the CDCR and is, and was at all relevant times, involved in conducting CDCR background investigations.

23. Defendant and Respondent V. MYERS is, and was at all relevant times, a Sergeant at the CDCR and is, and was at all relevant times, involved in conducting CDCR background investigations.

24. Upon information and belief, Defendant(s) and Respondent(s) JOHN (or JANE) DOE(S) 1-100 are individuals, who were involved and/or responsible for CDCR withholding of certification from Plaintiff and SPB's affirmation of that decision, and whose identifies and addresses are unknown at this time.

25. All of the acts and failures to act alleged herein were performed by and/or attributable to all Defendants. Each Defendant participated in, approved, and/or ratified the unlawful acts and omissions by the other Defendants complained of herein. Said acts and failure to act were within the scope of the inherent authority, employment, and/or direction and/or control of the Defendants.

STATEMENT OF FACTS

26. In August 2011, Plaintiff GUERRERO applied for a job as a Correctional Officer with CDCR. As part of the application process, Plaintiff GUERRERO was required to complete a written examination and a physical agility test, and to submit to a background investigation. Plaintiff GUERRERO passed the written and physical examinations.

27. As part of the background investigation, Plaintiff GUERRERO filled out a background questionnaire. Question #75 of the questionnaire asked whether the applicant "had or used a social security number other than the one you used on this questionnaire."

1 28. Plaintiff GUERRERO truthfully answered “yes” to Question #75. He submitted an
2 addendum explaining that he was brought to the United States unlawfully in or around 1990
3 when he was approximately 11 years old and that, when he was approximately 15 years old, he
4 started working to support the family and was provided a Social Security number (“SSN”). His
5 addendum also stated that he used the SSN until March 2007, when he obtained his own SSN.

6 29. In October 2011, Plaintiff GUERRERO participated in CDCR’s Pre-Investigatory
7 Interview. At that time, Plaintiff GUERRERO further explained to the background investigator
8 *inter alia* the following: (a) he was given an SSN so he could start working at a place where a
9 family friend worked when he was approximately 15 years old; (b) he did not learn he was
10 undocumented and that the SSN was not his own until he was 17 years old; (c) he used the SSN
11 to obtain work, but paid all required taxes from 1997 to 2007 using an Individual Taxpayer
12 Identification Number (“ITIN”), which is an identification number issued by the Internal
13 Revenue Service (“IRS”) to persons who are not eligible for an SSN for tax reporting purposes;
14 (e) he became a legal permanent resident of the United States in 2007, was issued his own SSN,
15 and started using his own SSN to file for taxes that same year and retroactively applied for
16 earned income tax credit paid during the years 2005-2007; and (g) he became a United States
17 citizen in 2010.

18 30. On or about January 27, 2012, CDCR sent Plaintiff GUERRERO a letter informing
19 him that he was being removed from the list of eligible candidates for the Correctional Officer
20 position.

21 31. In the CDCR letter, Defendants K. CARROLL, and D. SHARP referred to incidents
22 relating to Plaintiff GUERRERO’s prior use of an SSN that was not his own, and to his receipt
23 of an ITIN from the IRS. Lieutenant B. Potter-Goddard likewise signed the letter; however,
24 upon information and belief, Plaintiff believes Lieutenant B. Potter-Goddard to be currently
25 retired and no longer working for CDCR.

26 32. The CDCR letter further stated that Plaintiff GUERRERO did not satisfy the
27 requirements of State Personnel Board Rule 172, which, according to the letter, required that

1 “candidates shall possess the general qualifications of integrity, honesty, [and] good judgment”.

2 33. B. Potter-Goddard and Defendants K. CARROLL, and D. SHARP further stated *inter*
3 *alia* that “you [Plaintiff GUERRERO] committed identity theft for eight years but [sic] utilizing
4 a social security number of a United States citizen causing unknown ramifications for that
5 person by having income reported under their number which they were unaware of”.

6 34. The CDCR concluded that this action “shows a lack of honesty, integrity, and good
7 judgment.”, and that Plaintiff GUERRERO’s name would be removed from the list of eligible
8 candidates “in compliance with California Government Code § 18935 and State Personnel Board
9 Rule 172”.

10 35. Plaintiff GUERRERO timely appealed CDCR’s decision to SPB in a letter dated
11 February 22, 2012.

12 36. SPB did not hold a formal evidentiary hearing to adjudicate Plaintiff
13 GUERRERO’s appeal. Instead, Defendant LEASHORE, of SPB’s Appeals Division, issued a
14 recommendation that SPB affirm CDCR’s decision.

15 37. Defendant AMBROSE adopted Defendant LEASHORE’S recommendation and
16 SPB officially affirmed CDCR’s decision on or about August 21, 2012, citing to State Personnel
17 Board Rule 172, and stating *inter alia* that “[p]eace officers hold a special position of trust and
18 authority and, as such, they are held to a higher standard of conduct than are other employees . . .
19 by displaying a very high degree of integrity honesty, thoroughness, and good judgment.”

20 38. SPB reasoned that Plaintiff GUERRERO’s use of an SSN that did not belong to
21 him, and his use of an ITIN provided by the IRS, demonstrated “a knowingly [sic] and willful
22 disregard of the law” and, thus, “a lack of honesty, integrity, and good judgment.”

23 39. SPB also noted Plaintiff GUERRERO had initially misstated the year in which he
24 received his own SSN, and determined his misstatement “show[s] a lack of thoroughness and
25 accuracy, which are also issues of unsuitability under section 172.”

26 40. In affirming CDCR’s decision, SPB concluded that Plaintiff GUERRERO’s use of
27 an SSN not assigned to him demonstrated “a lack of thoroughness, accuracy, integrity, honesty,

1 and good judgment.”

2 41. SPB did not provide Plaintiff GUERRERO with any information about how or when
3 to appeal its affirmation of CDCR’s decision.

4 42. In 2013, Plaintiff GUERRERO re-applied for a position as a Correctional Officer.
5 Plaintiff GUERRERO again passed the written and physical examinations. On April 22, 2013,
6 Plaintiff GUERRERO completed the background questionnaire where he again truthfully
7 answered that he had at one time used an invented SSN to obtain work.

8 43. On July 22, 2013, Plaintiff GUERRERO again participated in CDCR’s Pre-
9 Investigatory Interview. Plaintiff GUERRERO again truthfully explained the circumstances
10 under which he used the false SSN.

11 44. On or about October 21, 2013, Defendants C. HESTER; V. MAYOL; S. COX and
12 V. MYERS sent Plaintiff GUERRERO a letter on behalf of CDCR informing him that he was
13 being removed from the list of eligible candidates for the Correctional Officer position.

14 45. Plaintiff GUERRERO is informed and believes and thereon alleges CDCR is still
15 using the same list of eligible candidates to fill positions.

16 46. CDCR updated its Personal History questionnaire in November 2012. In the updated
17 questionnaire, CDCR continues to ask applicants about their prior use of a Social Security
18 number, *see* http://www.cdcr.ca.gov/career_opportunities/por/docs/phs.pdf (last visited on
19 February 20, 2014).

20 47. Plaintiff GUERRERO filed administrative charges of employment discrimination
21 with the U.S. Equal Employment Opportunity Commission and the California Department of
22 Fair Employment and Housing on January 24, 2013, and again on December 4, 2013, with
23 respect to the foregoing matters. On December 4, 2013, Plaintiff GUERRERO requested
24 immediate notices of his right to sue thereon.

25 48. On January 29, 2014, Plaintiff received right to sue notices for all three
26 administrative charges. This action is timely filed.

27 //

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FIRST CLAIM FOR RELIEF
National Origin Discrimination in Violation of
Title VII of the Civil Rights Act of 1964, *as amended*
[42 U.S.C. § 2000e-2]

49. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 48, as though fully set forth herein.

50. Section 703 of Title VII, 42 U.S.C. § 2000e-2, prohibits employment practices that discriminate against persons on the basis of their national origin.

51. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants' disqualification of applicants who have previously used an SSN other than their own has an adverse and disproportionate impact on particular national origin minorities, such as Latinos, who seek to qualify for state employment.

52. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants' disqualification of applicants who have previously used an SSN other than their own has an adverse and disproportionate impact upon the ability of persons other than those of United States national origin to qualify for state employment.

53. Defendants' disqualification of applicants for the position of Correctional Officer who have previously used an SSN other than their current SSN is neither manifestly job-related nor consistent with business necessity.

54. Less discriminatory alternatives exist to achieve Defendants' stated business purposes.

55. Defendants' unlawful actions were intentional, willful, malicious and/or done with reckless disregard to Plaintiff GUERRERO's right to be free from discrimination based on his national origin.

56. As a further proximate result of these unlawful acts, Plaintiff GUERRERO has suffered and continues to suffer injury, including emotional injury.

57. Plaintiff GUERRERO is entitled to compensatory damages, injunctive and declaratory relief, and his reasonable attorneys' fees and costs of suit.

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SECOND CLAIM FOR RELIEF

**National Origin and Ancestry Discrimination in Violation of
California Fair Employment and Housing Act
[Cal. Gov't Code § 12940]**

58. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 57, as though fully set forth herein.

59. Under the FEHA, it is unlawful for an employer, on the basis of national origin or ancestry, “to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment ... or to discriminate against the person ... in terms, conditions or privileges of employment.” Cal. Gov't Code § 12940(a).

60. Defendants' unlawful actions were intentional, willful, malicious and/or done with reckless disregard to Plaintiff GUERRERO's right to be free from discrimination based on his national origin.

61. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants' disqualification of applicants who have previously used an SSN other than their own has an adverse and disproportionate impact on particular national origin minorities, such as Latinos, who seek to qualify for state employment.

62. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants' disqualification of applicants who have previously used an SSN other than their own has an adverse and disproportionate impact upon the ability of persons other than those of United States national origin to qualify for state employment.

63. Defendants' disqualification of applicants for the position of Correctional Officer who have previously used an SSN other than their current SSN is neither manifestly job-related nor consistent with business necessity.

64. Defendants violated Plaintiff GUERRERO's right to be free from discrimination based on his national origin and/or ancestry. In doing so, Defendants acted with malice, oppression, and/or fraud. As a further proximate result of these unlawful acts, Plaintiff GUERRERO has suffered and continues to suffer injury, including emotional injury.

65. Plaintiff GUERRERO is entitled to compensatory damages, injunctive and

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1 declaratory relief, and his reasonable attorneys' fees and costs of suit.

2 **THIRD CLAIM FOR RELIEF**

3 **National Origin Discrimination in State-Conducted Programs**
 4 **[Cal. Gov't Code § 11135]**

5 66. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
 6 through 65, as though fully set forth herein.

7 67. Under California Government Code § 11135, "[n]o person in the State of California
 8 shall, on the basis of . . . national origin [or] ethnic group identification . . . be unlawfully denied
 9 full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any
 10 program or activity that is conducted, operated, or administered by the state or by any state
 11 agency, is funded directly by the state, or receives any financial assistance from the state." Cal.
 12 Gov't Code § 11135(a).

13 68. Defendants CDCR and SPB are both state agencies funded directly by the state.
 14 Defendants unlawfully subjected Plaintiff GUERRERO to discrimination based on his national
 15 origin. Defendants' unlawful actions were intentional, willful, malicious and/or done with
 16 reckless disregard to Plaintiff GUERRERO's right to be free from discrimination based on his
 17 national origin.

18 69. Plaintiff GUERRERO is informed and believes and thereon alleges that
 19 Defendants' disqualification of applicants who have previously used an SSN other than their
 20 current SSN has an adverse and disproportionate impact on particular national origin minorities,
 21 such as Latinos, who seek to qualify for state employment.

22 70. Plaintiff GUERRERO is informed and believes and thereon alleges that Defendants'
 23 disqualification of applicants who have previously used an SSN other than their own has an
 24 adverse and disproportionate impact upon the ability of persons other than those of United States
 25 national origin to qualify for state employment.

26 71. Defendants' disqualification of applicants for the position of Correctional Officer
 27 who have previously used an SSN other than their current SSN is neither manifestly job-related
 28 nor consistent with business necessity.

72. Less discriminatory alternatives exist to achieve Defendants' stated business purposes.

73. As a proximate result of these unlawful acts, Plaintiff GUERRERO was denied the benefits of state employment and has suffered and continues to suffer injury, including emotional injury.

74. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive relief, and his reasonable attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

**For Violation of Equal Protection Clause of Fourteenth Amendment to the
United States Constitution
[42 U.S.C. § 1983]**

75. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 74, as though fully set forth herein.

76. Plaintiff GUERRERO has a right to equal protection of the laws which is secured by the Fourteenth Amendment to the United States Constitution.

77. The actions of Defendants, through their rejection of Plaintiff GUERRERO's application for a Correctional Officer position and through their pervasive and continuing practice of disqualifying applicants from state employment based solely on an applicant's prior use, for the purpose of obtaining and maintaining employment and its incidents, of a Social Security number not validly issued to them, have caused and will continue to cause the disqualification of Latino and/or all non-native born U.S. citizen applicants as opposed to applicants of other national origins, thereby depriving them of the rights, privileges, and immunities secured to them by 42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

78. Defendants acted under color of state law when unconstitutionally discriminating against Plaintiff GUERRERO.

79. As a proximate result of these unlawful acts, the Plaintiff GUERRERO has suffered and continues to suffer irreparable injury.

1 88. Plaintiff GUERRERO has a liberty interest in choosing his field of employment,
2 which is protected against arbitrary and/or capricious state interference by the Due Process
3 Clause of the Fourteenth Amendment to the United States Constitution and the California
4 Constitution.

5 89. By denying Plaintiff GUERRERO the ability to be considered for the Correctional
6 Officer position and refusing to provide Plaintiff GUERRERO with a formal evidentiary hearing
7 to appeal the CDCR decision, Defendants acting under color of state law, completely deprived
8 Plaintiff GUERRERO of the ability to engage in the profession of Correctional Officer, in
9 violation of the Due Process Clause of the Fourteenth Amendment to the United States
10 Constitution.

11 90. As a proximate result of these unlawful acts, Plaintiff GUERRERO suffered and
12 continues to suffer irreparable injury.

13 91. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive
14 relief, and his reasonable attorneys' fees and costs of suit.

15 **SEVENTH CLAIM FOR RELIEF**
16 **For Violation of the Due Process Clause**
17 **of the California Constitution**

18 92. Plaintiff incorporates by reference the allegations contained in Paragraphs 1
19 through 91, as though fully set forth herein.

20 93. Plaintiff GUERRERO has a liberty interest in choosing his field of employment,
21 which is protected against arbitrary and/or capricious state interference by Article 1, § 7 of the
22 California Constitution.

23 94. By denying Plaintiff GUERRERO the ability to be considered for the Correctional
24 Officer position and refusing to provide Plaintiff GUERRERO with a formal evidentiary hearing
25 to appeal the CDCR decision, Defendants, acting under color of state law, completely deprived
26 Plaintiff GUERRERO of the ability to engage in the profession of Correctional Officer, in
27 violation of Article I, § 7 of the California Constitution.

28 95. As a proximate result of these unlawful acts, Plaintiff GUERRERO suffered and

continues to suffer irreparable injury.

96. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive relief, and his reasonable attorneys' fees and costs of suit.

EIGHTH CLAIM FOR RELIEF

Petition for Writ of Mandate

For Violation of California Constitutional Requirements for Due Process [Cal. Code Civ. Proc. § 1094.5]

97. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 96, as though fully set forth herein.

98. Plaintiff GUERRERO's eligibility for the Correctional Officer position is a statutorily conferred benefit triggering due process protections. As such, Plaintiff GUERRERO has a due process interest both in fair decision-making and in being treated with respect and dignity.

99. Plaintiff GUERRERO petitions this Court for a writ of mandate pursuant to California Code of Civil Procedure § 1094.5. Defendants' determination to prevent him from being placed on the eligibility list for the Correctional Officer position violated due process and was "a prejudicial abuse of discretion." *See* Cal. Code Civ. Proc. § 1094.5(b). By depriving him of this right without a fair hearing, SPB did not proceed in a manner required by law.

100. As a proximate result, Plaintiff GUERRERO suffered and continues to suffer irreparable injury.

101. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive relief, and his reasonable attorneys' fees and costs of suit.

NINTH CLAIM FOR RELIEF

Petition for Writ of Mandate

For the Unlawful Expansion of Legislation [Cal. Code Civ. Proc. § 1085]

102. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 101, as though fully set forth herein.

103. Plaintiff GUERRERO is interested in and affected by Defendants' policies and

practices as alleged herein.

104. Defendants have a clear, present and ministerial duty to act in a manner consistent with applicable state law and to cease any policies and practices that conflict with state law. Defendants have the ability to perform its duty by complying with state law requirements.

105. Defendant SPB engaged in a ministerial duty, a quasi-legislative promulgation of SPB Rule 172 pursuant to California Government Code § 18935.

106. Respondent-Defendant SPB's promulgation of SPB Rule 172 unlawfully expanded the scope of California Government Code § 18935.

107. SPB Rule 172 purports to allow the SPB to disqualify Plaintiff GUERRERO from state employment for conduct less severe than the Legislature intended.

108. Plaintiff GUERRERO has no plain, speedy and adequate remedy at law in the ordinary course of law. Therefore, he is entitled to a writ of mandate pursuant to California Code of Civil Procedure § 1085 to compel Respondents-Defendants to comply with its statutory duty.

Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive relief, and his reasonable attorneys' fees and costs of suit.

TENTH CLAIM FOR RELIEF

Petition for Writ of Mandate

For Violation of Federal and State Statutory Anti-Discrimination Laws [Cal. Code Civ. Proc. § 1094.5]

109. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 108, as though fully set forth herein.

110. Plaintiff GUERRERO petitions this Court for a writ of mandate pursuant to California Code of Civil Procedure § 1094.5. Defendants' determination to decertify him from the eligibility list was "a prejudicial abuse of discretion." *See* Cal. Code Civ. Proc. 1094.5(b). Defendants discriminated against Plaintiff GUERRERO in violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2; FEHA, Cal. Gov't Code § 12940(a); the Fourteenth Amendment to the United States Constitution, California Constitution Art. I, § 7, and California Government Code

§ 11135. As a result, Defendants did not proceed in a manner required by law. Alternatively, Defendants' reliance on SPB Rule 172 to disqualify Plaintiff GUERRERO was a misapplication of state law.

111. As a proximate result of these unlawful acts, Plaintiff GUERRERO suffered and continues to suffer irreparable injury.

112. Plaintiff GUERRERO has exhausted all available administrative remedies as set forth above.

113. Plaintiff GUERRERO has no plain, speedy, and adequate remedy in the ordinary course of law.

114. Plaintiff GUERRERO is entitled to relief, including declaratory relief, injunctive relief, and his reasonable attorneys' fees and costs of suit.

DECLARATORY RELIEF ALLEGATIONS

115. A present and actual controversy exists between Plaintiff GUERRERO and Defendants concerning their rights and respective duties. Plaintiff GUERRERO contends that Defendants violated his rights under Title VII, FEHA, California Government Code § 11135, the Fourteenth Amendment to the United States Constitution, and California Constitution Art. 1, § 7. Plaintiff is informed and believes and thereon alleges that the Defendants deny these allegations. Declaratory relief is therefore necessary and appropriate.

116. Plaintiff GUERRERO seeks a judicial declaration of the rights and duties of the respective parties.

INJUNCTIVE RELIEF ALLEGATIONS

117. No plain, adequate, or complete remedy at law is available to Plaintiff GUERRERO to redress the wrongs addressed herein.

118. If this Court does not grant the injunctive relief sought herein, Plaintiff GUERRERO will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

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1 1. For a declaration that Defendants' actions, policies, and practices as alleged herein
2 are unlawful;

3 2. For judgment and issuance of a writ of mandate pursuant to California Code of Civil
4 Procedure § 1085 barring Defendants from disqualifying applicants from state employment based
5 solely on their prior use, for the purpose of obtaining and maintaining employment, of a Social
6 Security number not validly issued to them;

7 3. For judgment and issuance of a writ of mandate pursuant to California Code of Civil
8 Procedure § 1085 directing Defendants to discontinue their unlawful policy and practice of relying
9 on SPB Rule 172 to disqualify applicants who used an SSN other than their own in the past;

10 4. For judgment and issuance of a writ of mandate pursuant to California Code of Civil
11 Procedure § 1094.5 directing Respondents to set aside their decisions dated August 21, 2012, and
12 October 21, 2013, disqualifying Plaintiff GUERRERO as a candidate for the position of
13 Correctional Officer, and to restore him to eligibility for that position, or to show cause why a writ
14 of administrative mandate to the same effect should not be issued;

15 5. For an order requiring Defendants to notify their personnel, investigators,
16 administrative law judges, and hearing officers about the prevalent use of SSNs other than their
17 own among immigrant workers and the discriminatory impact a policy barring applicants from
18 state employment based on their prior use of an SSN other than their own would have on particular
19 national origin minorities such as Latinos.

20 6. For compensatory damages for Plaintiff's emotional pain and suffering, in an amount
21 to be proven at trial;

22 7. For interest on damages, including pre- and post-judgment interest and an upward
23 adjustment for inflation;

24 8. For an order enjoining Defendants from engaging in the unlawful acts complained of
25 herein;

26 9. For reasonable attorneys' fees and costs of suit pursuant to 42 U.S.C. § 1988(b), 42
27 U.S.C. § 2000e-5(k), California Government Code § 12965(b), California Code of Civil Procedure

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1 §1021.5, and other laws;

2 10. For such other and further relief as this Court deems just and proper.

3
4 Dated: February 25, 2014

Respectfully submitted,

5
6 Marsha J. Chien
Christopher Ho
7 THE LEGAL AID SOCIETY --
8 EMPLOYMENT LAW CENTER

9 By: /s/ Marsha J. Chien _____

10 MARSHA J. CHIEN
11 Attorneys for Plaintiff and Petitioner
VICTOR GUERRERO

DEMAND FOR JURY TRIAL

Plaintiff GUERRERO demands a trial by jury for his First and Second Claims for Relief as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: February 25, 2014

Marsha
Christopher
THE

J. Chien
Ho
LEGAL AID SOCIETY --
EMPLOYMENT LAW CENTER

By: /s/ Marsha J. Chien

MARSHA J. CHIEN

Attorneys
VICTOR

for Plaintiff and Petitioner
GUERRERO

VERIFICATION

I, MARSHA CHIEN, declare:

1. I am an attorney at law duly admitted and licensed to practice before all courts of this State.

2. I have my professional office at 180 Montgomery Street, Suite 600, San Francisco, California 94104.

3. I am one of the attorneys of record for Victor Guerrero, Plaintiff in this action.

4. The Plaintiff is absent from the county in which I have my office.

5. For that reason, I am making this verification on his behalf.

6. I have read the foregoing Petition for Writ of Mandate and Complaint and know the contents thereof.

7. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed at San Francisco, California, on February 25, 2014.

/s/

Marsha J. Chien

MARSHA J. CHIEN